



California Fair Political Practices Commission

September 7, 1989

Roberta M. Fesler
Assistant County Counsel
Public Services Division
County of Los Angeles
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-89-498

Dear Ms. Fesler:

You have requested advice on behalf of Los Angeles County Supervisor Michael D. Antonovich regarding his duties under the Political Reform Act (the "Act").^{1/}

QUESTIONS

The owner of a company which leases billboard space has offered to make available to the county at no charge unleased advertising space for the display of messages selected by the county.

1. Would the billboards be subject to the prohibition on sending mass mailings at public expense?

2. If the billboards include the name or picture of Supervisor Antonovich, would the gift of billboard space be considered a campaign contribution?

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. The billboards would not be subject to the prohibition on sending mass mailings at public expense.

2. The gift of billboard space is not a contribution if the payment is accepted in accordance with the procedures established in the Stone Opinion.

FACTS

The owner of a company which leases advertising space on billboards and signboards on transit buses has offered to make available to the County of Los Angeles, at no charge, unleased advertising space for the display of messages selected by the county. The signs will either be printed at county expense or will be donated to the county by a printing company. These gifts would be officially accepted by the county according to its established procedures.

Consideration is being given to a message urging anonymous reports of elder abuse and containing the telephone number of the county sponsored elder abuse hotline, a project introduced and backed by Supervisor Antonovich. The billboards and signboards would also contain the supervisor's picture and name in one corner. Similar types of messages and lay-outs might be considered in the future.

ANALYSIS

Mass Mailing

The Act as amended by Proposition 73 prohibits the sending of any mass mailing at public expense. (Section 89001.) The term mass mailing means "over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request letter or other inquiry." (Section 82041.5.) In addition, Regulation 18901 provides that a mass mailing is "sent" within the meaning of Section 89001 only if it is distributed by one of the following means:

- (1) United States Postal Service;
- (2) Any commercial delivery service;
- (3) Agency personnel or agents of the agency;
- (4) Volunteer delivery mechanisms.
- (5) Paid advertisement in any subscription publication such as a newspaper of general circulation.

(6) Electronic mail communications.

Regulation 18901 (g)(1) - (6).

In the present situation, the billboards and signboards are not "advertisements in subscription publications" within the meaning of Regulation 18901(g)(5), nor are they pieces of mail which are distributed by one of the other means. Accordingly, they do not fall within the mass mailing prohibition.

Campaign Contributions

Regulation 18215 provides:

(a) A contribution is any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

* * *

(2) Received by or made at the behest
of:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy or status as an office holder. The term "payment" includes the candidate's own money or property used on behalf of his or her candidacy;

Regulation 18215 (a) and (a)(2)
(A).

If, as discussed below, the billboards are earmarked for use by Supervisor Antonovich, they are undoubtedly being provided because of his status as an officeholder. Accordingly, they are contributions. In accordance with our previous advice, only the billboards which appear in Supervisor Antonovich's district constitute an in-kind contribution. (Dowd Advice Letter, No. A-86-054, copy enclosed.)

You have indicated that the billboards will be given to the county and will be accepted by the county according to its established procedures. The Commission has advised that, if certain procedures are followed, gifts to a public agency are not considered gifts to the agency officials who benefit therefrom. (In re Stone (1977) 3 FPPC Ops. 52.) Based on this precedent, we conclude that payments made to the county, in accordance with the criteria established in the Stone Opinion, would be neither gifts nor contributions.

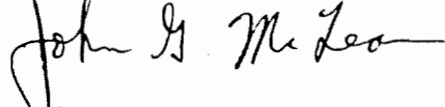
The criteria specified in the Stone Opinion are:

1. The donor must intend to donate the item to the city and not to the official.
2. The city must exercise substantial control over use of the item.
3. The donor may not limit use of the item to specified or high level employees, but rather must make it generally available to city personnel in connection with city business without regard to official status; and
4. The making and use of the gift must be formalized in a resolution of the city council which embodies the standards set forth above.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John G. McLean
Counsel, Legal Division

KED/JGM/aa

Enclosure



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

FPPC

JUL 28 11 47 AM '89

DE WITT W. CLINTON, COUNTY COUNSEL

FAX: 1-(213) 617-1142

(213) 974-1866

July 25, 1989

Mr. John H. Larson, Chairman
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95804

Re: Mass Mailing and Campaign
Contribution Restriction

Dear Chairman Larson:

We have been requested by Los Angeles County Supervisor Michael D. Antonovich to seek the opinion of the Fair Political Practices Commission on whether the mass mailing or campaign contribution restrictions apply to the following situation.

The owner of a company which leases advertising space on billboards and signboards on transit buses has offered to make available to the County at no charge unleased advertising space for the display of messages selected by the County. The signs will either be printed at County expense or will be donated to the County by a printing company. These gifts would be officially accepted by the County according to its established procedures.

Consideration is being given to a message urging anonymous reports of elder abuse and the telephone number of the County sponsored Elder Abuse Hotline, a project introduced and backed by Supervisor Antonovich. The billboards and signboards would also contain the Supervisor's picture and name in one corner. Similar types of messages and lay-outs might be considered in the future.

It is our view that the billboards and signboards are not mass mailing prohibited by Government Code Section 89001, even if the printing is paid out of County funds. Clearly, they are not mailings, nor are they distributed.

Mr. John H. Larson, Chairman
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Finally, they are not included within any of the categories of prohibited mass mailings set out in the Commission's regulations.

Nor do we believe that the donations can be classified as campaign contributions since they would be made to the County, be accepted by the County and carry a public service message of interest to the residents of the County.

We would appreciate your opinion on the facts and questions presented. If additional information is necessary, please feel free to contact me.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By *Roberta M. Fesler* by *RMFW*
ROBERTA M. FESLER
Assistant County Counsel
Public Services Division

RMF:jg

cc: Supervisor Michael D. Antonovich



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By *Roberta M. Fesler* - by RMF
ROBERTA M. FESLER
Assistant County Counsel
Public Services Division

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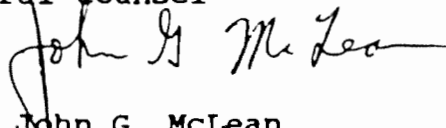
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